JAMES E. BILLINGS

IBLA 78-518 Decided December 22, 1978

Appeal from decision of Rawlins, Wyoming, District Office, Bureau of Land Management (BLM), issuing trespass notice WY-032-3077.

Affirmed.

1. Trespass: Generally

A notice to cease trespass and an order to remove improvements from the public lands are proper where appellant has been occupying public lands while operating a well service for 7-8 years without proper authorization.

APPEARANCES: Harry E. Leimbach, Esq., of Casper, Wyoming, for appellant.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

James E. Billings has appealed from decisions of the Rawlins, Wyoming, District Office, BLM dated June 8 and June 20, 1978, which issued a trespass notice WY-032-3077 for lands in the SW 1/4 sec. 12, T. 26 N., R. 90 W., sixth principal meridian, Wyoming.

The decision of June 8, 1978, notified Billings that he was occupying public land without proper authorization in violation of the Act of February 25, 1885 (43 U.S.C. § 1061 (1970)), 43 CFR 9239.2. The District Office indicated that sale or lease of the occupied lands was not warranted by the circumstances involved and he was given 60 days from receipt of the notice to remove all property from the lands.

After Billings requested reconsideration of the trespass notice, the District Office issued the subsequent decision of June 20, 1978, reaffirming their earlier determination. The office also pointed out that additional time could be granted for removal of improvements from the property, if needed.

No demand was made by BLM for the payment of damages for this occupancy trespass. On appeal, Billings asks for a lease or a right to purchase the subject land and repeats the same reasons for needing this land for his well service as he set out before the BLM. In addition, he asserts that there are others in the Bairoil area who are using BLM property and he feels he is being singled out for special action.

The facts of record show that appellant has occupied the land at issue for 7 or 8 years. The land contains improvements including a mobile home, a trailer house, two sheds, fuel tanks, a garage, and two old houses. The permanent structures were constructed by previous occupants. The BLM District Manager's trespass report of April 21, 1978, indicates that appellant knew at least as far back as November 21, 1974, that the land was public land. At that time he submitted a request to transfer to his name a land use permit supposedly belonging to his father, Melvin E. Billings.

Excerpts from a BLM interview with appellant February 23, 1978, confirm that appellant was operating an oil well service company from this location and that he used the land for storing equipment and to keep his trailer in which he lived since 1977. Appellant admitted he had not paid property taxes on the land and that it probably was Federal land.

The District Manager concluded that the operation was aesthetically displeasing and there was no justification for allowing it to remain on Federal land. The trespass notice and decision subsequently followed.

Appellant has been cited for trespass by his operation of the well service in violation of 43 CFR 9239.2, which provides in pertinent part:

> § 9239.2-1 Enclosures of public lands in specified cases declared unlawful.
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> (a) Section 1 of the act of February 25, 1885 (23 Stat. 321; 43 U.S.C. 1061), declares any enclosure of public lands made or maintained by any party, association, or corporation who "had no claim or color of title made or acquired in good faith, or an asserted right thereto, by or under claim, made in good faith with a view to entry thereof at the proper land office under the general laws of the United States at the time any such enclosure was or shall be made" to be unlawful and prohibits the maintenance of erection thereof.
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> * * * * * * *

(c) Section 10, paragraph (4) of the Federal Range Code, § 4112.3 of this chapter, containing rules for the administration of grazing districts prohibits "Constructing or maintaining any kind of improvements, structures, fences, or enclosures on the Federal range, including stock driveways, without authority of law or a permit.

He admits the occupancy of the land, but cites mitigating circumstances, stating that he thought the property was covered by some kind of special land use permit held in the name of Melvin Billings. He states the improvements were built by his predecessors, but admits he has maintained them for the purposes of continuing his business, which allegedly depends on this convenient location.

The BLM has responded to this appeal by denying that appellant has been singled out for special action. They have documented 10 other suspected trespass cases of similar circumstances which were processed at the same time with similar recommendations. In any event, the fact that other occupants in the Bairoil area may have yet to be removed would have no effect on the appropriate action to be taken in this case which is based on the merits of the investigation and recommendations of record. Accordingly, we find that the Bureau's action does not discriminate against appellant.

Although this particular location is admittedly convenient for appellant's service, BLM has found that he does not provide the only well service for oil producers of the area, contrary to his allegation. The field report indicated that interviews with Amoco representatives revealed that other well service companies operate from more distant locations and still service their company's wells in this area. Therefore, appellant's contention that his continued presence on the site is justified in the public interest cannot be sustained.

From our review we, therefore, conclude that BLM correctly has determined appellant is in trespass on this land. Appellant has provided nothing with this appeal to persuade us that the BLM ruling is arbitrary or out of step with their overall policy of clearing up the trend of trespass cases in the Bairoil area. Nor has appellant shown error in their determination that a lease or sale is not warranted in this case.

The BLM decision cited the trespass as violative of 43 U.S.C. § 1061 and 43 CFR 9239.2. We need not decide whether the statute and the regulation are relevant. The action taken is not in consonance with either. The statute includes a criminal sanction, 43 U.S.C. § 1064, and also provides for the instigation of civil suits for abatement of the trespass. The regulation contemplates that action under the statute shall be undertaken by referral to the United States District Attorney for institution of appropriate criminal or civil proceedings. 43 CFR 9239.2-1 thru 3.

However, the fact that BLM has not made resort to the procedures prescribed in the above-cited statute and regulations does not invalidate its order to appellant to cease his trespass and remove the unauthorized improvements. It is a matter of law that since the enactment of the Taylor Grazing Act in 1934, all public lands in the contiguous United States have been closed to any unilateral appropriation or entry not specifically authorized. 43 U.S.C. §§ 315, 315f (1976). The law is well established that the United States may act to restrain or abate trespasses on its land. Shannon v. United States, 160 F. 870 (9th Cir. 1908); United States v. Gizzinelli, 182 F. 675, 684 (D. Idaho 1910). Unauthorized structures on Federal public lands are subject to removal by the Department without compensation to the owner, pursuant to the general authority of the Secretary. 43 U.S.C. § 1201 (1976); Ryan Outdoor Advertising, Inc., 559 F.2d 554 (9th Cir. 1977).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Edward W. Stuebing
Administrative Judge

We concur:

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Douglas E. Henriques
Administrative Judge

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Joan B. Thompson
Administrative Judge